

1 XINGFEI LUO  
2 PO BOX 4886,  
3 El Monte, CA 91734

4

5 Petitioner in Pro Se

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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10

11 XINGFEI LUO,

12 Petitioner,

13 v.

14 THE PEOPLE OF THE STATE OF  
15 CALIFORNIA

16 Respondent.

17 No. 8:22-CV-01640-MEMF-KES

18

19 **PETITIONER'S OBJECTIONS TO**  
20 **MAGISTRATE JUDGE'S JULY 27,**  
21 **2023 ORDER**

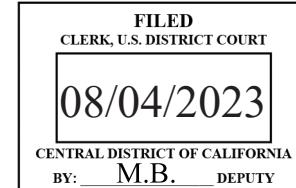
22

23 Action filed: September 6, 2022

24 Pursuant to Fed. R. Civ. P. 72(a), Xingfei Luo (Petitioner) respectfully submits her  
25 objections to Magistrate Judge's July 27, 2023 Order extending Respondent's deadline to  
26 respond to the First Amended Petition (FAP) to August 1, 2023 (the "Order"). ECF 34.

27 **PROCEDURAL HISTORY**

28 On September 6, 2022, Petitioner filed a petition for writ of habeas corpus  
asserting 34 claims of relief. ECF 1. On November 9, 2022, Michael Butera (Butera)  
entered his appearance on behalf of Respondent. ECF 15. On December 20, 2022 the  
magistrate granted *Rhines* stay allowing Petitioner to exhaust claims in state courts. ECF  
18. During the process of exhausting her claims in state courts, Petitioner consistently  
provided regular updates to Butera by serving him with copies of her filings made in those



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 6 consent to amend her petition pursuant to FRCP Rule 15(a)(2). In her email to Butera,  
 7 Petitioner requested Butera's response by June 3, 2023. Luo Decl., ¶ 3. Petitioner's  
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27 Where a magistrate judge's order relates to "a pretrial matter not dispositive of a  
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20 **I. THE MAGISTRATE JUDGE EXCEEDED HER AUTHORITY TO  
 21 EXTEND RESPONDENT'S DEADLINE TO RESPOND TO THE  
 22 FIRST AMENDED PETITION TO AUGUST 1, 2023**

23 FRCP Rule 6(b) strictly requires the presence of good cause or excusable neglect to  
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26 Before the original time or its extension expires, FRCP Rule 6(b)(1)(A) allows the  
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5 Pursuant to FRCP Rule 6(b)(1)(B), a post-deadline extension must be "upon  
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7 result of excusable neglect." *Lujan v. National Wildlife Federation*, 497 U.S. 871, 873 &  
8 896, 110 S.Ct. 3177, (1990). As of July 27, 2023, there is no indication in the record that  
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11 *sua sponte* extension of time to respond was unjustified with no valid basis. Extension  
12 under these circumstances doesn't serve the end of a "just, speedy, and inexpensive  
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16 *Corp.*, CV 20-8850-DMG (Ex), at \*2 (C.D. Cal. Aug. 11, 2022) (noting that a request to  
17 continue or extend dates or deadlines that have already expired is presumptively a lack of  
18 due diligence.)

19 **CONCLUSION**

20 Based on the foregoing, Petitioner requests that the Court vacate the July 27, 2023  
21 Order.

22 Respectfully submitted,  
23 Date: August 4, 2023

24 /s/ Xingfei Luo  
25  
26  
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## DECLARATION OF XINGFEI LUO

I, XINGFEI LUO, declare and state:

3       1. I am the petitioner in this petition. I have personal knowledge of all facts stated  
4 herein. If called as a witness, I could and would competently testify thereto.

5       2. During the process of exhausting my claims in state courts, I consistently provided  
6 regular updates to Butera by serving him with copies of my filings made in those state  
7 courts. The latest one was my filings with California Supreme Court. A true and correct  
8 copy of the electronic service is attached hereto as Exhibit 1.

9       3. After the *Rhines* stay was lifted, on May 31, 2023, I requested Butera's written  
10      consent to amend my petition pursuant to FRCP Rule 15(a)(2). In my email to Butera, I  
11      requested Butera's response by June 3, 2023. Butera never responded to my email, nor did  
12      he ask for more time to respond. However, my email has alerted Butera about the  
13      forthcoming amended petition and the case not being stayed. If Butera truly had stopped  
14      receiving ECF notifications since May 22, 2023 as he claimed, after receiving my email  
15      on May 31, 2023, it would have been incumbent upon him to discover the malfunction in  
16      the ECF notifications. A true and correct copy of the correspondence is attached hereto as  
17      Exhibit 2.

18 4. A courtesy copy of this document was directly sent to [michael.butera@doj.ca.gov](mailto:michael.butera@doj.ca.gov).

19 5. On July 30, 2023 I submitted this objection to EDSS and received a Tracking  
20 Number: EDS-230730-000-8553. A true and correct copy of the submission is attached  
21 hereto as Exhibit 3.

22 6. On August 2, 2023 I discovered the clerk did not enter the said document into ECF.  
23 I immediately informed the chamber. A true and correct copy of the correspondence is  
24 attached hereto as Exhibit 4

25      7. Between August 3 and August 4, 2023 I made almost ten phone calls to (714) 338-  
26      4750 and left voice mails. However, I received no returning phone call to resolve the  
27      failure to enter my submission into ECF. Therefore, I had no choice to re-submit this  
28      objection.

1 I declare under penalty of perjury under the laws of the State of California and  
2 United States of America that the foregoing is true and correct.

3 Executed in Rosemead, CA on August 4, 2023.

4 /s/ XINGFEI LUO

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## CERTIFICATE OF SERVICE

I declare that I electronically filed the foregoing with the United States District Court, Central District of California. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

In addition, I electronically served the forgoing to the following email address:

[michael.butera@doj.ca.gov](mailto:michael.butera@doj.ca.gov)

I declare under penalty of perjury under the laws of the State of California and United States of America that the foregoing is true and correct.

Executed on August 4, 2023

/s/ XINGFEI LUO

XINGFEI LUO, In Pro Per

## EXHIBIT 1



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## In Re Luo S278439

**From:** CPRArq@mail.com  
**To:** Michael.Butera@doj.ca.gov  
**Date:** Apr 5, 2023 10:39:34 PM

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FYI

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### Attachments

- 20230405 Supplement.pdf



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## Habeas petition exhibit VIII

**From:** 22\_cv\_01640@mail.com  
**To:** Michael.Butera@doj.ca.gov  
**Date:** Feb 1, 2023 9:42:44 PM

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FYI

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### Attachments

- 20230201 Writ exhibits VIII.pdf



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## Habeas petition

**From:** 22\_cv\_01640@mail.com  
**To:** Michael.Butera@doj.ca.gov  
**Date:** Feb 1, 2023 9:41:40 PM

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FYI

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### Attachments

- 20230201 hc001 PETITION FOR WRIT OF HABEAS CORPUS.pdf
- 20230201 Writ exhibits VI.pdf
- 20230201 Writ exhibits VII.pdf

## EXHIBIT 2



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## Request for Consent to Amend Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus

**From:** 22\_cv\_01640@mail.com  
**To:** Michael.Butera@doj.ca.gov  
**Date:** May 31, 2023 8:46:42 PM

---

Dear Mr. Butera,

I hope this email finds you well. I am writing to you in my capacity as the petitioner in the case No. 8:22-cv-01640 pending before California Central District Court. Pursuant to FRCP Rule 15(a)(2), which governs the amendment of pleadings, I am seeking your written consent to amend my Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus.

As you may be aware, Rule 15(a)(2) provides that a party may amend its pleading only with the opposing party's written consent or the court's leave. Recognizing the importance of collaboration and transparency in the pursuit of justice, I believe that an amendment to my petition would be in the best interests of both parties and the court. It would allow for a more comprehensive presentation of the issues and could potentially facilitate a more efficient resolution of this matter.

I would like to inform you that the proposed amendment seeks to add a new claim based on recently discovered issue that has been presented to the California Supreme Court. ECF 21. This claim would strengthen my arguments in challenging the constitutionality of my conviction. In accordance with the principles of fairness and due process, I believe that this amendment is necessary to fully and adequately present my claims.

I kindly request that you carefully review the proposed amendment, as attached, and consider providing your written consent to their inclusion in my petition. This collaborative approach would not only streamline the litigation process but also demonstrate my commitment to a thorough and robust examination of the issues at hand.

If you have any concerns or objections regarding the proposed amendment, I encourage you to express them in writing as soon as possible so that I may address them and attempt to reach a resolution. Alternatively, if you believe that the court's leave is necessary for the amendment, kindly inform me of your intention so that I may take appropriate steps to seek the court's permission.

Please note that my request for amendment is made in good faith and with the utmost respect for the legal process. I believe that an open dialogue and cooperative approach will serve the interests of both parties and contribute to the fair and just resolution of this case.

I look forward to your prompt response by the end of this week and sincerely hope that we can find common ground to proceed with the proposed amendment. Should you have any questions or require further clarification, please do not hesitate to contact me.

Thank you for your attention to this matter.

Luo

- Appendix.pdf
- First amended petition.pdf

## EXHIBIT 3



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## Submission Confirmation

**From:** "Civil Intake" <do-not-reply@cacd.uscourts.gov>  
**To:** 22\_cv\_01640@mail.com  
**Date:** Jul 30, 2023 11:13:22 AM

---

**Dear Xingfei Luo:**

This email confirms that the document(s) listed below were received by the United States District Court for the Central District of California at the date and time indicated:

**Name:** Xingfei Luo  
**Tracking Number:** EDS-230730-000-8553  
**Date:** 7/30/2023 11:13:21 AM

Uploaded files:

- **20230730 Obj to extension.pdf**

*PETITIONER'S OBJECTIONS TO MAGISTRATE JUDGE'S JULY 27, 2023 ORDER*

The document(s) have not yet been filed. Just like documents received through the U.S. Mail, documents received through the Electronic Document Submission System ("EDSS") will not be considered filed until court staff have uploaded them into the Court's Case Management/Electronic Case Filing System ("CM/ECF"). Documents submitted using EDSS should be processed within 1-2 business days of receipt. However, the date of EDSS submission will be considered the filing date for any documents received through EDSS and later filed into CM/ECF.

If you are registered for electronic service of documents and receiving e-service in this case, you will receive a Notice of Electronic Filing ("NEF") from the CM/ECF System as soon as each document listed above has been filed. (Click [here](#) for information about registering for electronic service or to add e-service in this case.) If you are not registered for electronic service, you may check the status of your documents by checking the docket for your case on PACER (<https://pacer.uscourts.gov>). Please wait at least two business days after receiving this email and check the docket for your case on PACER before contacting the Court regarding the status of documents submitted through EDSS.

If you are trying to file a document in a case pending before the United States Bankruptcy Court, or in any case pending in any court other than the United States District Court for the Central District of California, your document will not be filed and you will not receive any response to your EDSS submission. Likewise, if you are an attorney required by the local rules to file your documents electronically using the Court's CM/ECF System, your document(s) will not be filed if submitted through EDSS, and you will not receive any further communication from the Court about your EDSS submission.

Please include the tracking number listed above as your reference on any communications with the Court about this submission. We recommend that you keep this email for your records.

Civil Intake  
United States District Court  
Central District of California  
Tel: (213) 894-3535

1 XINGFEI LUO  
2 PO BOX 4886,  
3 El Monte, CA 91734

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5 Petitioner in Pro Se

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Action filed: September 6, 2022

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19 **CONCLUSION**

20 Based on the foregoing, Petitioner requests that the Court vacate the July 27, 2023  
21 Order.

22 Respectfully submitted,  
23 Date: July 30, 2023

24 /s/ Xingfei Luo  
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28

## DECLARATION OF XINGFEI LUO

I, XINGFEI LUO, declare and state:

1. I am the petitioner in this petition. I have personal knowledge of all facts stated herein. If called as a witness, I could and would competently testify thereto.

2. During the process of exhausting my claims in state courts, I consistently provided regular updates to Butera by serving him with copies of my filings made in those state courts. The latest one was my filings with California Supreme Court. A true and correct copy of the electronic service is attached hereto as Exhibit 1.

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4. A courtesy copy of this document was directly sent to [michael.butera@doj.ca.gov](mailto:michael.butera@doj.ca.gov).

I declare under penalty of perjury under the laws of the State of California and United States of America that the foregoing is true and correct.

Executed in Rosemead, CA on July 30, 2023.

/s/ XINGFEI LUO

## CERTIFICATE OF SERVICE

I declare that I electronically filed the foregoing with the United States District Court, Central District of California. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

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Executed on July 30, 2023

/s/ XINGFEI LUO

XINGFEI LUO, In Pro Per

## EXHIBIT 1



---

## In Re Luo S278439

**From:** CPRArq@mail.com  
**To:** Michael.Butera@doj.ca.gov  
**Date:** Apr 5, 2023 10:39:34 PM

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FYI

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### Attachments

- 20230405 Supplement.pdf



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## Habeas petition exhibit VIII

**From:** 22\_cv\_01640@mail.com  
**To:** Michael.Butera@doj.ca.gov  
**Date:** Feb 1, 2023 9:42:44 PM

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FYI

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### Attachments

- 20230201 Writ exhibits VIII.pdf



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## Habeas petition

**From:** 22\_cv\_01640@mail.com  
**To:** Michael.Butera@doj.ca.gov  
**Date:** Feb 1, 2023 9:41:40 PM

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FYI

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### Attachments

- 20230201 hc001 PETITION FOR WRIT OF HABEAS CORPUS.pdf
- 20230201 Writ exhibits VI.pdf
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## EXHIBIT 2



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## Request for Consent to Amend Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus

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Dear Mr. Butera,

I hope this email finds you well. I am writing to you in my capacity as the petitioner in the case No. 8:22-cv-01640 pending before California Central District Court. Pursuant to FRCP Rule 15(a)(2), which governs the amendment of pleadings, I am seeking your written consent to amend my Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus.

As you may be aware, Rule 15(a)(2) provides that a party may amend its pleading only with the opposing party's written consent or the court's leave. Recognizing the importance of collaboration and transparency in the pursuit of justice, I believe that an amendment to my petition would be in the best interests of both parties and the court. It would allow for a more comprehensive presentation of the issues and could potentially facilitate a more efficient resolution of this matter.

I would like to inform you that the proposed amendment seeks to add a new claim based on recently discovered issue that has been presented to the California Supreme Court. ECF 21. This claim would strengthen my arguments in challenging the constitutionality of my conviction. In accordance with the principles of fairness and due process, I believe that this amendment is necessary to fully and adequately present my claims.

I kindly request that you carefully review the proposed amendment, as attached, and consider providing your written consent to their inclusion in my petition. This collaborative approach would not only streamline the litigation process but also demonstrate my commitment to a thorough and robust examination of the issues at hand.

If you have any concerns or objections regarding the proposed amendment, I encourage you to express them in writing as soon as possible so that I may address them and attempt to reach a resolution. Alternatively, if you believe that the court's leave is necessary for the amendment, kindly inform me of your intention so that I may take appropriate steps to seek the court's permission.

Please note that my request for amendment is made in good faith and with the utmost respect for the legal process. I believe that an open dialogue and cooperative approach will serve the interests of both parties and contribute to the fair and just resolution of this case.

I look forward to your prompt response by the end of this week and sincerely hope that we can find common ground to proceed with the proposed amendment. Should you have any questions or require further clarification, please do not hesitate to contact me.

Thank you for your attention to this matter.

Luo

- Appendix.pdf
- First amended petition.pdf

## EXHIBIT 4



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## Re: RE: Submission Confirmation

**From:** 22\_cv\_01640@mail.com  
**To:** "MEMFChambers" <MEMF\_Chambers@cacd.uscourts.gov>  
**Date:** Aug 4, 2023 2:03:50 PM

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Hello,

ECF 39 is an error.  
I submitted two objections to two different magistrate judge's orders. Only one was entered. See below and attached:

The following document was not entered into ECF:

**Tracking Number:** EDS-230730-000-8553

**Date:** 7/30/2023 11:13:21 AM

Uploaded files:

- **20230730 Obj to extension.pdf**

*PETITIONER'S OBJECTIONS TO MAGISTRATE JUDGE'S JULY 27, 2023 ORDER*

The following document was entered into ECF as Doc. 38:

**Tracking Number:** EDS-230801-000-8592

**Date:** 8/1/2023 3:03:48 PM

Uploaded files:

- **20230801 Obj to extension 2.pdf**

*PETITIONER'S OBJECTIONS TO MAGISTRATE JUDGE'S JULY 31, 2023 ORDER*

Thanks.

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**Sent:** Friday, August 04, 2023 at 9:18 AM  
**From:** 22\_cv\_01640@mail.com  
**To:** "MEMFChambers" <MEMF\_Chambers@cacd.uscourts.gov>  
**Subject:** Re: RE: Submission Confirmation

Good morning,

Since yesterday, I've made five phone calls but until now I still cannot reach anyone who is able to fix the issue. Would you advise whatelse I can do? The document is time sensitive and it should have been entered before August 1.

Thanks.

**Sent:** Thursday, August 03, 2023 at 3:59 PM

**From:** 22\_cv\_01640@mail.com

**To:** "MEMFChambers" <MEMF\_Chambers@cacd.uscourts.gov>

**Subject:** Re: RE: Submission Confirmation

Hello,

FYI, I have called the clerk four times today but still couldn't reach anyone who was able to assist me with the issue.

Thanks.

**Sent:** Thursday, August 03, 2023 at 9:14 AM

**From:** 22\_cv\_01640@mail.com

**To:** "MEMFChambers" <MEMF\_Chambers@cacd.uscourts.gov>

**Subject:** Re: RE: Submission Confirmation

I have called the intake clerk and left a voice mail. Please see below:

Uploaded files:

- **20230730 Obj to extension.pdf**

*PETITIONER'S OBJECTIONS TO MAGISTRATE JUDGE'S JULY 27, 2023 ORDER*

**Tracking Number:** EDS-230730-000-8553

**Date:** 7/30/2023 11:13:21 AM

The above is not ECF 38 which is objections to another order entered on July 31, 2023.

Thanks.

**Sent:** Thursday, August 03, 2023 at 9:06 AM

**From:** 22\_cv\_01640@mail.com

**To:** "MEMFChambers" <MEMF\_Chambers@cacd.uscourts.gov>

**Subject:** Re: RE: Submission Confirmation

See attached. On July 30, 2023 I submitted a document titled objections to **July 27, 2023 order**, doc 38 is a different document. I will call the intake clerk in a minute. Thanks.

**Sent:** Wednesday, August 02, 2023 at 8:49 PM

**From:** "MEMFChambers" <MEMF\_Chambers@cacd.uscourts.gov>

**To:** "22\_cv\_01640@mail.com" <22\_cv\_01640@mail.com>

**Subject:** RE: Submission Confirmation

08/01/2023	<a href="#">view38</a>	PETITIONER'S OBJECTIONS TO MAGISTRATE JUDGE'S JULY 31, 2023 ORDER, <a href="#">36</a> filed by Petitioner Xingfei Luo. (es) (Entered: 08/02/2023)
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**Your filing is on the docket.**

#1851

**From:** 22\_cv\_01640@mail.com <22\_cv\_01640@mail.com>  
**Sent:** Wednesday, August 2, 2023 7:55 PM  
**To:** MEMFChambers <MEMF\_Chambers@cacd.uscourts.gov>  
**Subject:** Fw: Submission Confirmation

**CAUTION - EXTERNAL:**

Hello,

Just for your information, the intake clerk failed to enter the following document in ECF.

Thank you.

Luo

**Sent:** Sunday, July 30, 2023 at 11:13 AM  
**From:** "Civil Intake" <[do-not-reply@cacd.uscourts.gov](mailto:do-not-reply@cacd.uscourts.gov)>  
**To:** [22\\_cv\\_01640@mail.com](mailto:22_cv_01640@mail.com)  
**Subject:** Submission Confirmation

**Dear Xingfei Luo:**

This email confirms that the document(s) listed below were received by the United States District Court for the Central District of California at the date and time indicated:

**Name:** Xingfei Luo  
**Tracking Number:** EDS-230730-000-8553  
**Date:** 7/30/2023 11:13:21 AM

Uploaded files:

**• 20230730 Obj to extension.pdf**

*PETITIONER'S OBJECTIONS TO MAGISTRATE JUDGE'S JULY 27, 2023 ORDER*  
The document(s) have not yet been filed. Just like documents received through the U.S. Mail, documents received through the Electronic Document Submission System ("EDSS") will not be considered filed until court staff have uploaded them into the Court's Case Management/Electronic Case Filing System ("CM/ECF"). Documents submitted using EDSS should be processed within 1-2 business days of receipt. However, the date of EDSS submission will be considered the filing date for any documents received through EDSS and later filed into CM/ECF.

If you are registered for electronic service of documents and receiving e-service in this case, you will receive a Notice of Electronic Filing ("NEF") from the CM/ECF System as soon as each document listed above has been filed. (Click [here](#) for information about registering for electronic service or to add e-service in this case.) If you are not registered for electronic service, you may check the status of your

documents by checking the docket for your case on PACER (<https://pacer.uscourts.gov>). Please wait at least two business days after receiving this email and check the docket for your case on PACER before contacting the Court regarding the status of documents submitted through EDSS.

If you are trying to file a document in a case pending before the United States Bankruptcy Court, or in any case pending in any court other than the United States District Court for the Central District of California, your document will not be filed and you will not receive any response to your EDSS submission. Likewise, if you are an attorney required by the local rules to file your documents electronically using the Court's CM/ECF System, your document(s) will not be filed if submitted through EDSS, and you will not receive any further communication from the Court about your EDSS submission.

Please include the tracking number listed above as your reference on any communications with the Court about this submission. We recommend that you keep this email for your records.

Civil Intake  
United States District Court  
Central District of California  
Tel: (213) 894-3535

**CAUTION - EXTERNAL EMAIL:** This email originated outside the Judiciary.  
Exercise caution when opening attachments or clicking on links.

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**Attachments**

- 038 Obj to extension 2.pdf
- 20230730 Obj to extension.pdf